

AMENDED IN SENATE AUGUST 7, 2012

AMENDED IN ASSEMBLY MARCH 26, 2012

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 1522

Introduced by Assembly Member Atkins

(Principal coauthors: Assembly Members Jeffries and Mitchell)

(Principal coauthors: Senators Alquist, Anderson, Liu, and Wyland)

**(Coauthors: Assembly Members Block, *Fletcher*, Garrick, *Harkey*,
Hueso, Jones, and Miller)**

(Coauthors: Senators Kehoe and, *Strickland*, and Vargas)

January 18, 2012

An act to amend ~~Sections 782.5 and 4324~~ *Section 4320* of, and to
add *Section 4324.5* to, the Family Code, relating to family law.

LEGISLATIVE COUNSEL'S DIGEST

AB 1522, as amended, Atkins. Family law: monetary awards.

Existing law provides that, in addition to any other remedy authorized by law, when a spouse is convicted of attempting to murder the other spouse or of soliciting the murder of the other spouse, the injured spouse shall be entitled to 100% of the community property interest in his or her retirement and pension benefits, and a prohibition of specified support or insurance benefits from the injured spouse to the convicted spouse. Existing law defines “injured spouse” for these purposes. ~~Further, existing law authorizes a court to award attorney’s fees and costs in the form of a sanction in these cases. Under existing law, a family court is required to consider specified factors in ordering spousal support, including the criminal conviction of an abusive spouse.~~

This bill would expand ~~these~~ *the above described* provisions to apply when a spouse is convicted of a specified violent sexual felony against the other spouse, *and would require the court to consider the convicted spouse's criminal conviction for a violent sexual felony. The bill would also require the court to order the attorney's fees and costs to be paid from the community assets if warranted by economic circumstances. Under the bill, the injured spouse, as defined, would not be required to pay any of the convicted spouse's attorney's fees out of his or her separate property. The bill would further define the date of the parties' legal separation as the date of the incident giving rise to the conviction, or earlier if the court finds that the circumstances justify an earlier date, for community property purposes. This bill would also entitle an injured spouse, subject to exception, to a prohibition of attorney's fees from the injured spouse to the convicted spouse.*

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 *SECTION 1. Section 4320 of the Family Code is amended to*
- 2 *read:*
- 3 4320. In ordering spousal support under this part, the court
- 4 shall consider all of the following circumstances:
- 5 (a) The extent to which the earning capacity of each party is
- 6 sufficient to maintain the standard of living established during the
- 7 marriage, taking into account all of the following:
- 8 (1) The marketable skills of the supported party; the job market
- 9 for those skills; the time and expenses required for the supported
- 10 party to acquire the appropriate education or training to develop
- 11 those skills; and the possible need for retraining or education to
- 12 acquire other, more marketable skills or employment.
- 13 (2) The extent to which the supported party's present or future
- 14 earning capacity is impaired by periods of unemployment that
- 15 were incurred during the marriage to permit the supported party
- 16 to devote time to domestic duties.
- 17 (b) The extent to which the supported party contributed to the
- 18 attainment of an education, training, a career position, or a license
- 19 by the supporting party.

1 (c) The ability of the supporting party to pay spousal support,
2 taking into account the supporting party's earning capacity, earned
3 and unearned income, assets, and standard of living.

4 (d) The needs of each party based on the standard of living
5 established during the marriage.

6 (e) The obligations and assets, including the separate property,
7 of each party.

8 (f) The duration of the marriage.

9 (g) The ability of the supported party to engage in gainful
10 employment without unduly interfering with the interests of
11 dependent children in the custody of the party.

12 (h) The age and health of the parties.

13 (i) Documented evidence of any history of domestic violence,
14 as defined in Section 6211, between the parties, including, but not
15 limited to, consideration of emotional distress resulting from
16 domestic violence perpetrated against the supported party by the
17 supporting party, and consideration of any history of violence
18 against the supporting party by the supported party.

19 (j) The immediate and specific tax consequences to each party.

20 (k) The balance of the hardships to each party.

21 (l) The goal that the supported party shall be self-supporting
22 within a reasonable period of time. Except in the case of a marriage
23 of long duration as described in Section 4336, a "reasonable period
24 of time" for purposes of this section generally shall be one-half
25 the length of the marriage. However, nothing in this section is
26 intended to limit the court's discretion to order support for a greater
27 or lesser length of time, based on any of the other factors listed in
28 this section, Section 4336, and the circumstances of the parties.

29 (m) The criminal conviction of an abusive spouse shall be
30 considered in making a reduction or elimination of a spousal
31 support award in accordance with Section 4324.5 or 4325.

32 (n) Any other factors the court determines are just and equitable.

33 *SEC. 2. Section 4324.5 is added to the Family Code, to read:*

34 *4324.5. (a) In any proceeding for dissolution of marriage*
35 *where there is a criminal conviction for a violent sexual felony*
36 *perpetrated by one spouse against the other spouse and the petition*
37 *for dissolution is filed before five years following the conviction*
38 *and any time served in custody, on probation, or on parole, the*
39 *following shall apply:*

1 (1) An award of spousal support to the convicted spouse from
2 the injured spouse is prohibited.

3 (2) Where economic circumstances warrant, the court shall
4 order the attorney's fees and costs incurred by the parties to be
5 paid from the community assets. The injured spouse shall not be
6 required to pay any attorney's fees of the convicted spouse out of
7 the injured spouse's separate property.

8 (3) The date of legal separation shall be the date of the incident
9 giving rise to the conviction, or earlier, if the court finds
10 circumstances that justify an earlier date.

11 (4) The injured spouse shall be entitled to 100 percent of the
12 community property interest in the retirement and pension benefits
13 of the injured spouse.

14 (b) As used in this section, "violent sexual felony" means those
15 offenses described in paragraphs (3), (4), (5), (11), and (18) of
16 subdivision (c) of Section 667.5 of the Penal Code.

17 (c) As used in this section, "injured spouse" means the spouse
18 who has been the subject of the violent sexual felony for which the
19 other spouse was convicted.

20 ~~SECTION 1. Section 782.5 of the Family Code is amended to~~
21 ~~read:~~

22 ~~782.5. In addition to any other remedy authorized by law, when~~
23 ~~a spouse is convicted of attempting to murder the other spouse, as~~
24 ~~punishable pursuant to subdivision (a) of Section 664 of the Penal~~
25 ~~Code, of soliciting the murder of the other spouse, as punishable~~
26 ~~pursuant to subdivision (b) of Section 653f of the Penal Code, or~~
27 ~~of a violent sexual felony against the other spouse as defined in~~
28 ~~paragraphs (3), (4), (5), (11), (15), with the exception of assault~~
29 ~~with intent to commit mayhem, and (18) of subdivision (c) of~~
30 ~~Section 667.5 of the Penal Code, the injured spouse shall be entitled~~
31 ~~to an award to the injured spouse of 100 percent of the community~~
32 ~~property interest in the retirement and pension benefits of the~~
33 ~~injured spouse.~~

34 ~~As used in this section, "injured spouse" has the same meaning~~
35 ~~as defined in Section 4324.~~

36 ~~SEC. 2. Section 4324 of the Family Code is amended to read:~~

37 ~~4324. (a) In addition to any other remedy authorized by law,~~
38 ~~when a spouse is convicted of attempting to murder the other~~
39 ~~spouse, as punishable pursuant to subdivision (a) of Section 664~~
40 ~~of the Penal Code, of soliciting the murder of the other spouse, as~~

1 punishable pursuant to subdivision (b) of Section 653f of the Penal
2 Code, or of a violent sexual felony against the other spouse as
3 defined in paragraphs (3), (4), (5), (11), (15), with the exception
4 of assault with intent to commit mayhem, and (18) of subdivision
5 (e) of Section 667.5 of the Penal Code, the injured spouse shall be
6 entitled to a prohibition of any temporary or permanent award for
7 spousal support, attorney's fees, except as provided in subdivision
8 (e), or medical, life, or other insurance benefits or payments from
9 the injured spouse to the convicted spouse.

10 (b) As used in this section, "injured spouse" means the spouse
11 who has been the subject of the attempted murder, the solicitation
12 of murder, or the violent sexual felony for which the other spouse
13 was convicted, whether or not actual physical injury occurred.

14 (c) A court may, in any hearing regarding child custody,
15 visitation, or child support, subsequent to the spouse's conviction
16 as described in subdivision (a), order the injured spouse to pay
17 attorney's fees, under those extraordinary circumstances where
18 the interest of justice and the best interests of the child or children
19 compel that order, if the convicted spouse has already completed
20 the prison term for which he or she was sentenced. The court shall
21 state its reasons for the order in writing or on the record.